



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAR 21 2012.

Mr. Joe Green

Independence, Kentucky 41051

RE: MUR 6539
Joe Green

Dear Mr. Green:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that you may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On September 7, 2011, you were notified that this matter had come to the attention of the Commission's Office of General Counsel for possible enforcement action under 2 U.S.C. § 437g. On March 12, 2012, the Commission found reason to believe that you knowingly and willfully violated 2 U.S.C. § 432(c), 2 U.S.C. § 434(b) and 2 U.S.C. § 439a(b). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

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Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

We look forward to your response.

On behalf of the Commission,



Caroline C. Hunter
Chair

Enclosure
Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Joe Green

MUR 6539

I. INTRODUCTION

This matter was generated based on information ascertained by the Federal Election Commission ("Commission") in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). This information revealed violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Joe Green, including recordkeeping and reporting discrepancies in connection with his duties as treasurer of Geoff Davis for Congress ("Committee"), and conversion of campaign funds to personal use. Based on available information, there is reason to believe that Joe Green knowingly and willfully violated 2 U.S.C. §§ 432(c), 434(b), and 439a(b).

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Joe Green served as treasurer of the Committee from January 2003 to July 2010. The Commission notified Joe Green that it had information that he had received unauthorized disbursements totaling \$7,343.03, failed to report those disbursements on the Committee's disclosure reports, and refunded \$5,900 in unauthorized disbursements to the Committee.¹

After the Commission notified Green of the information that it had ascertained, Green responded that during his last two years as treasurer of the Committee, he was "less

¹ According to the Committee's 2010 October Quarterly Report, Green wrote a check for 5,900 to the Committee on July 27, 2010, and the Committee noted that this receipt was for "return of unauthorized disbursement." The disclosure report also notes that the bank returned the check to the Committee on August 2, 2010, and that the Committee received another check from Joe Green on August 5, 2010 for \$5,935.

than diligent in discharging his duties" due to demanding responsibilities in his professional employment. Green also stated that while working for the campaign, he "never intentionally misappropriated funds" from the campaign, but was a "sloppy bookkeeper" in the final months of his tenure.

Further,

Green states that he had problems in handling the Committee's accounting records. Green claims not to "remember the details" of his unauthorized payments to himself from campaign funds. With his response to the notification, Green attached a check made out to the Committee for the remaining \$1,443.03 of the \$7,343 in alleged unauthorized withdrawals, and that check was immediately returned to him by the Commission.

B. Legal Analysis

A contribution or donation described in 2 U.S.C. § 439(a) shall not be converted to personal use. 2 U.S.C. § 439a(b)(1). A contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of federal office. 2 U.S.C. § 439a(b)(2). The Act and Commission regulations set forth some examples of personal use, such as mortgage payments, tuition payments, noncampaign-related automobile expenses, and health club dues. See 2 U.S.C. § 439a(b)(2)(A)-(I); see also 11 C.F.R. § 113.1(g).

Joe Green made five unauthorized payments to himself in 2009 and 2010 from Committee funds totaling \$7,343.03, which were apparently for personal use, and failed to report the payments on the Committee's disclosure reports. The first unauthorized payment

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was for \$500, as evidenced by Committee check number 2655, which was made out to Green for \$2,000, but was reported on the Committee's disclosure report as a disbursement for \$1,500. According to the Committee's 2009 July Quarterly Report, the disbursement of \$1,500 was made on April 1, 2009. The remaining four unauthorized payments totaling \$6,843.03, as evidenced by Committee check number 10500 on September 30, 2009 and Committee check numbers 10497, 10498, 10499 on February 24, 2010, April 15, 2010 and June 17, 2010, respectively, were made out to Green and not reported on the Committee's disclosure reports. Thus, it appears that Green made unauthorized payments to himself, using Committee checks, on five different occasions over a period of 15 months, and failed to report them on the Committee's disclosure reports. While we do not know the specific purposes for which Green spent the alleged unauthorized disbursements, he has not denied converting \$7,343.03 in campaign funds for personal use in violation of 2 U.S.C. § 439a(b)(1). Moreover, his repayment of most of the funds to the Committee may also constitute an admission that he unlawfully misappropriated those funds.

According to the Commission's *Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings*, a former treasurer may be named as a respondent in his personal capacity when it appears that he, while serving as treasurer, may have violated obligations imposed by the Act or regulations, and where the violations were knowing and willful. 70 Fed. Reg. 3 (January 3, 2005). See MUR 6179 (Christopher Ward), MUR 5610 (Earl Allen Haywood), MUR 5721 (Lockheed Martin), MUR 5971 (Jennifer Adams). Under the Act, a treasurer is required to accurately keep an account of and report disbursements. See 2 U.S.C. §§ 432(c)(5), 434(b)(4) and (6). Committee treasurers and any other person required to file any report or statement under the Act and the

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Commission's regulations are also personally responsible for the timely and complete filing of the report or statement and for the accuracy of any information or statement contained in it. 11 C.F.R. § 104.14(d).

The Act addresses violations that are knowing and willful. *See* 2 U.S.C. § 437g(a)(5)(B). The knowing and willful standard requires knowledge that one is violating the law. The phrase "knowing and willful" indicates that "acts were committed with full knowledge of all of the relevant facts and a recognition that the action is prohibited by law..." 122 Cong. Rec. H3778 (daily ed. May 3, 1976); *see also* *AFL-CIO v. FEC*, 628 F.2d 97, 98, 101-02 (D.C. Cir.), *cert. denied*, 449 U.S. 982 (1980) (noting that a "willful" violation includes "such reckless disregard of the consequences as to be equivalent to a knowing, conscious, and deliberate flaunting of the Act," but concluding on the facts before it that this standard was not met) (*cited in* *National Right to Work Comm. v. FEC*, 716 F.2d 1401, 1403 (D.C. Cir. 1983)). An inference of knowing and willful conduct may be drawn "from the defendant's elaborate scheme for disguising" his or her actions. *United States v. Hopkins*, 916 F.2d 207, 214-15 (5th Cir. 1990). The evidence need not show that the defendant "had specific knowledge of the regulations" or "conclusively demonstrate" a defendant's "state of mind," if there are "facts and circumstances from which the jury reasonably could infer [the defendant] knew her conduct was unauthorized and illegal." *Id.* at 213 (*quoting* *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir.), *cert. denied*, 439 U.S. 838 (1989)).

Although he states he "never intentionally misappropriated funds" from the Committee, Green's apparent efforts to disguise the disbursements to himself by failing to include them in the Committee's reports strongly indicates that he knew that his conduct

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was illegal. Accordingly, there is reason to believe that Joe Green knowingly and willfully violated 2 U.S.C. §§ 432(c), 434(b), and 439a(b).

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